

3. Both dismissal motions incorrectly assert that the Postal Regulatory Commission (“PRC”) is without jurisdiction to consider the Plaintiff’s Complaint and Plaintiff failed to state a claim upon which relief can be granted.

4. In considering the motions for dismissal, the well settled legal standards require the Commission to deem all of the factual averments of the challenged pleading as true and to grant dismissal only if Plaintiff still would not be entitled to any relief under any theory of law even if everything Plaintiff averred is true. *When deciding a motion to dismiss ... the court (Commission) “must accept all of the plaintiff’s allegations as true and construe disputed facts in favor of the plaintiff.”* *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 368 (3d Cir. 2002) (quoting *Carteret Sav. Bank, FA v. Shushan*, 954 F.2d 141, 142 (3d Cir. 1992)). A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) may be granted only if, accepting all well pleaded allegations in the complaint as true, and drawing all reasonable factual inferences in favor of the plaintiff, it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would warrant relief. *Oran v. Stafford*, 226 F.3d 275, 279 (3d Cir. 2000). Dismissal is appropriate only “if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69 (1984); see also *Lorenz v. CSX Corp.*, 1F.3d 1406, 1411 (3d Cir. 1993); *Adani Exps., Ltd. v. AMCI Corp.*, 2006 U.S. Dist. LEXIS 77205 (E.D.P.A. 2006).

5. The PRC is an independent agency of the United States Government whose function, as its name suggests, is to regulate the conduct and provide transparency and accountability of the operations of the Defendant USPS, particularly including

addressing violations of the Postal Accountability and Enhancement Act (“PAEA”), which was enacted in 2006.

6. In the present case, the Complaint alleges that the USPS, starting in 2007, conspired with and worked in concert with its falsely disavowed stakeholder and incumbent supplier, co-Defendant, PBI, to violate the PAEA, enacted in 2006, by, among other violations, compelling the disclosure of intellectual property to a third party and obtaining information concerning a product from Plaintiff and then using that information without Plaintiff’s consent and without compensating Plaintiff, which violates Sections 403 and 404 of the PAEA.

7. Defendant USPS now moves to dismiss based in part upon a purported Innovations@USPS “Confidential Disclosure Disclaimer”. (See Attachment “A” to the USPS dismissal motion). Here, the Defendants exploit and misapply the theory of “confidentiality”. It is obvious that once an agent of the Postal Service develops interest in a person’s proposal, the Postal agent will have to discuss the proposal with their respective colleagues. With this in mind, absolute confidentiality between the Postal agent and submitter of the proposal cannot be maintained and the submitter needs to agree to those terms. While the disclaimer waives Defendant USPS confidentiality in this sense, it surely **does not**: 1) permit Defendant USPS or its colleagues to steal the person’s intellectual property or, 2) supersede or waive the provisions of the PAEA or the Innovations@USPS “Privacy Act” notice. (See the following paragraphs 11-14 of this response, pertaining to the Innovations@USPS “Privacy Act” notice).

8. Thereafter, the USPS motion moves to dismiss based in part upon two additional purported “Confidential Disclosure Disclaimers”, Attachment “B” of which is

dated 2003 and Attachment “G” which is clearly dated 2001, printed in July 2002, and therefore both are obviously superseded by the 2006 PAEA. (See Attachment “B” & “G” to the USPS dismissal motion).

9. On page 4 of the USPS dismissal motion, at footnote 25, Defendant USPS mischaracterizes paragraph 21 of the Complaint, stating Plaintiff, “*allegedly submitted his proposal through the USPS Unsolicited Proposal Program (UPP)*”, when in fact, Plaintiff did not submit his proposal through the USPS UPP.

10. Plaintiff is acting pro se and should have better articulated in paragraph 21 that Plaintiff’s “follow[ing] of Mr. Cinelli’s instructions” only included “reviewing the criteria” of the UPP to see *if he would* submit his proposal to the USPS UPP. Plaintiff should have clarified in paragraph 21 that he decided not to submit his proposal upon finding that the UPP criteria did not fit.

11. After inaccurately claiming that Plaintiff did submit his proposal to the UPP, the USPS dismissal motion proceeds to allege that the UPP confidentiality “terms and conditions” apply to Plaintiff. Defendant attached to its motion those UPP Terms and Conditions, and referenced the “Unsolicited Program Proposal Disclaimer dated 2002”, in footnote 26. Yet the Defendants omit the material facts of the Innovations@USPS Privacy Act notice which states in pertinent part: ... “*Collection of information for this service is authorized by 39 U.S.C. 401, 403, & 404. We do not disclose your information without your consent to third parties, except to facilitate the request, to act on your behalf or request, or as legally required...*”

12. The Innovations@USPS Privacy Act notice also substantiates Plaintiff’s allegations that the Postal Service’s protocol when considering new products or

proposals is disclosing intellectual property to its stakeholders, suppliers, service providers: The Innovations Privacy Act notice continued: *“This includes the following limited circumstances: to a congressional office on your behalf; to financial entities regarding financial transaction issues; to a USPS auditor; to entities, including law enforcement, as authorized by law or in legal proceedings; and to contractors and other entities aiding us to fulfill the service (service providers).”*

13. When evaluating the provisions of the Privacy Act wherein Defendant USPS’s collection of proprietary information is under the provisions of US code, subsequently, the third parties listed in the “limited circumstances” must be held to the same provisions. Therefore, with the present claims alleging that a USPS service provider, Defendant PBI, was involved with Defendant USPS in violations of statutes that are within the jurisdiction of the PRC, the PRC has jurisdiction to adjudicate claims against the USPS service provider, Defendant PBI.

14. Moreover, in addition to the fact that the Innovations@USPS Privacy Act states, *“We (Postal Service) do not disclose your information without your consent to third parties...”*, the Innovations@USPS “Confidential Disclosure Disclaimer” does not waive the Defendants’ “Duties of trust or confidence”, since the Defendants, USPS and PBI, and their colleagues have a history of sharing confidences such that the recipient of the information should know that the person communicating the material nonpublic information expects that the recipient will maintain its confidentiality. The factual assertions of the Complaint clearly allege the Defendants have violated duties of trust and numerous prohibitions as set forth in the PAEA.

15. In addition to the facts that the PRC has jurisdiction pertaining to USPS service provider, Defendant PBI, the third parties listed in the “limited circumstances” are employed to provide Defendant USPS with consultation regarding the collected information, making them Government employees. 28 USC §2671 defines Government employees as: “*persons acting on behalf of a federal agency in official capacity, temporarily or permanently in the service of the United States, whether with or without compensation*”. Therefore, contrary to the Defendant’s assertions, the PRC has jurisdiction over both Defendants in the instant case.

16. The USPS motion to dismiss omits material facts and makes materially false statements. Specifically page 4 of the USPS motion omits the material fact pertaining to the Postal Service’s June 11, 2007 email affirming that the Postal Service “circulated” or disclosed Plaintiff’s proprietary information to “potential stakeholders” or “third parties”. Moreover, this action was without Plaintiff’s consent and therefore violates the Privacy Act, *inter alia*.

17. Plaintiff’s complaint clearly asserts that the §404(a) claims are based on and stem from the proprietary information that Plaintiff trusted and discussed in confidence, under the protection of the PAEA, with the Postal Service beginning in 2007, who unlawfully disclosed it to Defendant PBI, *inter alia*. There are numerous examples of the Defendants making materially false or misleading pleadings to delay justice which should be corrected or stricken from the record including, but not limited to:

- a) Contrary to the USPS’s misleading argument, Plaintiff did not waive confidentiality, his intellectual property rights as set forth in the Privacy Act and the PAEA, or the Defendants’ duty of trust by submitting his proposal to

Innovations@USPS. Plaintiff did not provide any confidential information other than a description of the verification process in response to the Innovations@USPS basic questionnaire. Moreover, the Innovations Privacy Act notice states that the information is collected under the provisions of the PAEA; therefore the information is protected by the PAEA.

- b) Contrary to the dismissal motion, Plaintiff did not waive confidentiality or the Defendants' duty of trust by submitting the published patent application because it did not contain the proprietary confidential information that was shared with the Postal Service and also because it is predated by the Defendants' misconduct including, but not limited to, Defendant USPS's unlawful disclosure of Plaintiff's proprietary information to Defendant PBI and the Defendants' conspiracy to steal Plaintiff's intellectual property.
- c) Also, Plaintiff did not waive confidentiality or the Defendants' duty of trust through his 2009 communications with Defendant PBI because those communications were predated by the Defendant USPS's unlawful disclosure of Plaintiff's proprietary information to Defendant PBI and the Defendants' conspiracy to steal Plaintiff's intellectual property.

18. In the Complaint now before the PRC, the Defendants are accused of being co-conspirators, combining their Government and private statuses in the commission of the alleged misconduct.

19. Previously in the District Court, Defendant USPS managed to avoid even having to answer these allegations by claiming the PRC has exclusive jurisdiction over them, and now in the PRC, the USPS falsely alleges that the claims were adjudicated in

the District Court, and that the PRC is without jurisdiction. Plaintiff urges the PRC to hold the USPS to the jurisdictional statement it made to the District Court.

20. PBI has moved to dismiss based on the PRC's alleged lack of personal jurisdiction, claiming it is not a government actor. However, incorporating paragraphs 5-6 and 11-15, the legal concept that otherwise private actors working in concert with governmental actors can be treated as government actors is very well settled.

21. In addition to the claims Plaintiff brought in 2011 in the District Court against these Defendants, Plaintiff discovered that the USPS OIG recommended criminal investigation for the Defendants' non-compliant, unlawful real estate transactions on or about April 22, 2015, which supports Plaintiff's claims that dismantling the Postal Service's assets was part of the Defendants' scheme to privatize the Defendant USPS upstream operations for the benefit of Defendant PBI.

22. Additionally, Plaintiff discovered in 2015 the Defendants' misconduct of economic-industrial espionage after a May 2013 live stream from Defendant Pitney Bowes, Inc. CEO Marc Lautenbach.

23. While the claims alleged by Plaintiff in 2011 were dismissed by the District Court without being adjudicated, it is not even possible that the new claims were adjudicated because Plaintiff had not asserted them, or even discovered them, prior to the District Court dismissal.

24. Moreover, the dismissal decisions of the District Court, which the Federal Circuit and Supreme Court, affirmed, were based on and stemmed from demonstrably false assertions by the Defendants. Specifically, the USPS denied that it had any

stakeholders while denying that PBI was one of its stakeholders, despite overwhelming evidence to the contrary available on USPS's own web site and in the communications of USPS agent Thomas Cinelli. Defendant USPS also denied the existence of the \$10,000,000 Dollar Amount Limitation on experimental products, despite the limitation being **codified** in the United States Code (39 USC §3641(e)).

25. Apparently, the District Court was unduly influenced by the unlawful representation of Defendant USPS by the DOJ, which representation was prohibited by 39 USC §404(g)(1). It is believed and therefore averred that the District Court failed to address the blatantly false statements contained in USPS pleadings because of the said undue influence of the DOJ.

26. Far from actually adjudicating Plaintiff's claims, what the District Court did was more like abdicating its duty to adjudicate. The PRC should therefore deny the USPS dismissal motion and actually require the USPS to answer Plaintiff's claims, unlike the District Court which allowed the USPS to avoid and evade them.

27. With further regard to the dismissal motion of PBI, Plaintiff urges the PRC to recognize that the allegations that rogue operatives within the Defendant USPS are assisting and working in concert with Defendant PBI in cannibalizing the USPS, requires that both PBI and USPS remain parties to this case and that both be required to answer the Complaint and respond to discovery.

28. The PRC should not allow the Defendant USPS to evade justice by hiding behind Defendant PBI.

/s/
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